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Guy M. Hicks
General Counsel

OFFICE OF THE
EXECUTIVE SECRETARY

October 29, 1999

VIA HAND DELIVERY

Mr. David Waddell, Executive Secretary
Tennessee Regulatory Authority
460 James Robertson Parkway
Nashville, Tennessee 37243-0505

Re: *Petition by ICG Telecom Group, Inc. for Arbitration of an Interconnection Agreement with BellSouth Telecommunications, Inc. pursuant to Section 252(b) of the Telecommunications Act of 1996*
Docket No. 99-00377

Dear Mr. Waddell:

Enclosed are the original and thirteen copies of BellSouth Telecommunications, Inc.'s Response to ICG Telecom Group, Inc.'s Motion to Strike. Copies of the enclosed are being provided to counsel of record for all parties.

Very truly yours,

Guy M. Hicks

GMH/jem

Enclosure

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BEFORE THE TENNESSEE REGULATORY AUTHORITY
Nashville, Tennessee

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In Re: *Petition by ICG TELECOM GROUP, INC. for Arbitration of an Interconnection Agreement with BELLSOUTH TELECOMMUNICATIONS, INC. pursuant to Section 252(b) of the Telecommunications Act of 1996*

Docket No. 99-00377

**BELLSOUTH TELECOMMUNICATIONS, INC.'S RESPONSE
TO ICG TELECOM GROUP, INC.'S MOTION TO STRIKE**

ICG Telecom Group, Inc. ("ICG") has moved to strike approximately five pages of the prefiled direct testimony of Alphonso J. Varner of BellSouth Telecommunications, Inc. ("BellSouth"). BellSouth respectfully opposes ICG's Motion.

ICG Telecom contends that a certain portion of Mr. Varner's testimony improperly "attempts to raise issues already decided by the Authority in this docket." While Mr. Varner does address the arbitrability of the reciprocal compensation issue, (page 4, line 4 through page 5, line 4), Mr. Varner also addresses whether as a matter of policy the Authority should simply defer to the Federal Communications Commission ("FCC") on this issue. Such testimony is relevant and addresses a question this Authority has thus far not considered. Although the Authority has determined that matters related to reciprocal compensation are appropriate for arbitration, it has not determined whether it should as a matter of policy address the issue of reciprocal compensation during the pendency of the FCC's rulemaking on the subject. Mr. Varner's testimony that addresses this issue is proper and should not be stricken.

ICG also has moved to strike portions of Mr. Varner's testimony that address alternatives to reciprocal compensation for ISP-bound traffic. Establishing an appropriate interim inter-carrier compensation mechanism for ISP-bound traffic is a critical issue in this arbitration, as

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ICG's own witnesses acknowledge. Starkey Direct Testimony at 5 (the reciprocal compensation issue "is of the utmost importance to ICG ..."). The Authority's decision concerning what interim inter-carrier compensation mechanism should be adopted, if any, will have a significant impact on BellSouth, other incumbents, CLECs, Internet users, and residential rate payers. Given the importance of the issue, ICG should want this Authority to consider all the alternatives to reciprocal compensation rather than trying to tie the Authority's hands by limiting the evidence in the record.

ICG's claim that alternatives to reciprocal compensation "extends beyond the scope of the question for the Authority" is wrong. Although ICG phrased the issue as whether dial-up calls to ISPs should be treated as local for purposes of reciprocal compensation, alternatives to reciprocal compensation are necessarily subsumed within this issue. This is clear from the testimony of ICG's own witnesses. For example, in her direct testimony dated October 15, 1999, ICG witness Cindy Schonhaut describes how the lack of reciprocal compensation for ISP-bound traffic would harm ICG and would deny internet service providers the benefit of competition. *See* Direct Testimony of Cindy Schonhaut at 4-7. Likewise, ICG witness Starkey testifies about the results he predicts will occur if reciprocal compensation is not paid for ISP-bound traffic. Direct Testimony of Michael Starkey at 12-14. In assessing the credibility of such claims, the Authority must consider whether there are any alternatives to reciprocal compensation that would alleviate ICG's concerns. Some of these alternatives are discussed in the portions of Mr. Varner's testimony to which ICG so strenuously objects.

That the parties intended to address alternatives to reciprocal compensation also is evident from the Issues Matrix jointly submitted by the parties previously filed on September 3, 1999. In setting forth the parties' position on Issue 1, ICG reiterated its claim that "ICG will

receive no compensation for handling these calls unless the TRA orders [reciprocal compensation].” In BellSouth's position statement, BellSouth indicated that it intended to “propose an interim mechanism for ISP-bound traffic until the FCC issues a final order in its inter-carrier compensation docket.” This interim mechanism is addressed in Mr. Varner's testimony. Mr. Varner's testimony does not unlawfully expand the issue raised by ICG in its arbitration petition, but merely provides the Authority with more complete information by which to evaluate ICG's claim for reciprocal compensation. Accordingly, the Authority should deny ICG's motion to strike these portions of Mr. Varner's testimony, particularly given the importance of this issue.

BellSouth does not deny that the Florida Commission reached a contrary result. However, if ICG wants this Authority to follow blindly decisions of the Florida Commission, then the Authority should also know that the Florida Commission removed from the ICG arbitration all issues related to liquidated damages or penalties -- issues the Florida Commission held were not arbitrable. *See Prehearing Order, in re: Petition of ICG Telecom Group, Inc. for Arbitration of Unresolved Issues in Interconnection Negotiations with BellSouth Telecommunications, Inc.*, Docket No. 990691-TP, at 14 (Sept. 28, 1999).

For the foregoing reasons, ICG's Motion to Strike should be denied, and the parties should be able to present all of their testimony which the Authority can evaluate and assess in resolving the issues in this arbitration.

Respectfully submitted this 29th day of October 1999.

BELL~~SOUTH~~ TELECOMMUNICATIONS, INC.

A handwritten signature in black ink, appearing to read "Guy M. Hicks", written over a horizontal line.

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CERTIFICATE OF SERVICE

I hereby certify that on October 29, 1999, a copy of the foregoing document was served on the parties of record, via the method indicated:

- ☒ Hand
- ☐ Mail
- ☐ Facsimile
- ☐ Overnight

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- ☒ Hand
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